

# WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT

12109 Highway 166, Bakersfield, CA 93313-9630

Telephone: 661.858.2281 ♦ Fax: 661.858.2643 ♦ Water Orders: 661.858.2296  
www.wrmwsd.com File 5.4.0

December 9, 2013

California Department of Water Resources  
Encroachment Unit  
1416 Ninth Street, Room 649  
Sacramento, CA 95814  
[epregs@water.ca.gov](mailto:epregs@water.ca.gov)

ROBERT J. KUNDE  
ENGINEER-MANAGER

MARK E. GARDNER  
CONTROLLER

THOMAS R. SUGGS  
STAFF ENGINEER

STEPHEN L. DUNN  
O&M SUPERINTENDENT

**Subject: Encroachment Permit Regulations**

Dear Reviewer:

We are aware that the California Department of Water Resources proposes to adopt regulations establishing rules and procedures for obtaining an Encroachment Permit along the State Water Project (SWP) right-of-way and we appreciate the opportunity to comment on the proposed regulations. The Wheeler Ridge-Maricopa Water Storage District has executed various agreements with the DWR for the construction, operation, and maintenance of its facilities within the SWP right-of-way. And from time to time, the District has obtained Encroachment Permits when there was the need for some maintenance or construction activity that extended beyond the limits of our operating agreements. We have learned by experience that the requirements for obtaining an Encroachment Permit are fairly complex, so we support your efforts to formalize the procedures.

Firstly, we wish to highlight some elements of the proposed regulations that are positive and that we believe should be preserved.

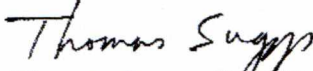
- There is a categorical exemption for persons who perform activities pursuant to authority conferred by lease, contract, agreement, license, or agreement (Section 607.2), or who have existing agreements for the construction, operation, and maintenance of authorized encroachments (Sections 607.1 and 608.2). We support this, but suggest changing “persons” to “entities” or “persons or entities”.
- There is also an exception to bonding requirements for counties, cities, and public agencies that are authorized to maintain facilities within the SWP right-of-way (Section 610.8). We support this.
- It is stated that “The Department, within thirty (30) days of receipt of the application, shall determine whether the application for an encroachment permit is complete” (Section 618.1), and “Within sixty (60) days of receipt of an application determined by the Department to be complete, the Department shall approve or deny the application for an encroachment permit” (Section 618.3). We support this commitment by the DWR.

Next, we will mention some items that we believe should be clarified or perhaps simplified.

- We have some concerns that the language is a little broad in Section 605, Activities Requiring Encroachment Permits. For example, it appears that permit requirements would be triggered by “alteration of the ground surface elevation by more than one foot” (paragraph a), “modifications to the existing soil or other cover over State Water Project pipelines” (paragraph b), or “temporary or permanent placement of excavated materials in the Department’s right-of-way” (paragraph c). We are all too familiar with all-inclusive language leading to unexpected results, such as the conundrum that exists in the Clean Water Act, in which it is permissible to dig a shovel full of dirt in a wetland but unlawful to put the dirt back in the hole, because that would constitute discharge of fill material into the waters of the United States. We can envision a situation in which the placement of pipeline markers or survey monuments could create small mounds of dirt in the State right-of-way that could trigger a nexus to permit requirements. We would like to avoid that, so we request that you either add an exception for anchors, markers, and monuments, or specify a minimum amount of soil involved, such as “placement of excavated materials greater than five cubic yards”.
- Similar to the above point, Section 610.2 states that temporary entry permits may be issued for “visual inspections” and “aerial and ground surveys”. As a practical matter, visual surveys have no more impact than say, fishing, which is permitted without any kind of entry permit.
- In Section 607.1, concerning persons exempt from permitting, it states “A person’s legal real property or other interests shall be determined by the Department upon submission of the appropriate documentation, agreement, reservation of rights by the person or interest *requesting* the exemption.” Generally, persons that operate outside of administrative oversight by exemption do not have to request an exemption, although they may have to prove that they are exempt if there is a question. Accordingly, we suggest you change “requesting the exemption” to “asserting the exemption” in Section 607.1
- We suggest unifying the number of plan copies to be submitted with the permit application. For example, Section 610.1, paragraph a), item 5) requires “two (2) hard copy sets and one (1) electronic (PDF format) set of plans, reports, studies, specifications, analyses, and permits”. Section 610.1, paragraph b), item 1) requires seven (7) sets of calculations, specifications, and detailed construction and work plans”. And Section 618.4, paragraph b), items 1) and 2) require “eight (8) sets of full sized plans...” and “1 set of 11 x 17 inch plans...”. We are happy to provide as many sets as the DWR requires, but we suggest changing all of the above to two hard copy sets and one electronic set.
- Finally, given that relatively light activities could trigger the need for an Encroachment Permit, we request that the \$1,500 non-refundable deposit in Section 610.1 be reduced to a lesser amount.

Once again, we appreciate your attention to our comments and commend your efforts to establish uniform rules and procedures. If you have any questions, please don't hesitate to call me at (661) 858-2281 x 15.

Respectfully yours,

A handwritten signature in cursive script that reads "Thomas Suggs".

Thomas Suggs, P.E., P.G.  
Staff Engineer

cc: Rob Kunde  
Steve Dunn